

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 862 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?No

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CHOTABHAI SHANKERBHAI PATEL DECEASED THROUGH HIS HEIRS

Versus

STATE OF GUJARAT

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Appearance:

Shri B.S.Patel, Advocate, for the Petitioner.

Shri T.H. Sompura, Assistant Government Pleader, for the Respondents.

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 11/09/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Vadodara (respondent No.2 herein) on 12th November 1984

under Section 8 (4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.3 herein) on 28th February 1995 in Appeal No.Vadodara-41 of 1994 is under challenge in this petition under Articles 226 and 227 of the Constitution of India. By his impugned order, respondent No.2 declared the holding of one Chhotabhai Shankarbhai Patel (the deceased for convenience) to be in excess of the ceiling limit by 16793 square metres.

2. The facts giving rise to this petition move in a narrow compass. The deceased filed his declaration in the prescribed form under Section 6 (1) of the Act with respect to his holding within the urban agglomeration of Vadodara. His holding included one parcel of land bearing survey No.691 situated in village Gorwa within the urban agglomeration of Vadodara (the disputed land for convenience). By the order passed by and on behalf of the State Government (respondent No.1 herein) on 3rd January 1980, exemption under Section 20 (1) of the Act was granted qua the disputed land on certain terms and conditions. Its copy is at Annexure-C to this petition. In that view of the matter, respondent No.2 did not process the declaration filed by the deceased. It appears that, later on, the deceased through his Advocate indicated to respondent No.3 that his form may be processed as the disputed land was not used for agricultural operations and it was converted into the non-agricultural land. He requested respondent No.2 to treat the exemption granted by the order at Annexure-C to this petition as cancelled. Thereupon, respondent No.2 reopened the case and processed the declaration filed by the deceased. After observing necessary formalities under Section 8 of the Act, by his order passed on 12th November 1984 under sub-section (4) thereof, respondent No.2 declared the holding of the deceased to be in excess of the ceiling limit by 16793 square metres. Its copy is at Annexure-A to this petition. It appears that the deceased did not carry the matter in appeal and accepted the aforesaid order passed by respondent No.2. It appears that, after his demise, the present petitioner as his heir and legal representative carried the matter in appeal before respondent No.3 under Section 33 of the Act nearly ten years after the date of the order at Annexure-A to this petition. It came to be registered as Appeal No.Vadodara-41 of 1994. By his order passed on 28th February 1995, respondent No.3 dismissed the aforesaid appeal. Its copy is at Annexure-B to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under

Articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure-A to this petition as affirmed in appeal by the appellate order at Annexure-B to this petition.

3. Learned Assistant Government Pleader Shri Sompura for the respondents has raised a preliminary objection against maintainability of this petition on the ground of inordinate delay on the part of the petitioner in approaching this court for challenging inter alia the appellate order at Annexure-B to this petition. Learned Advocate Shri Patel for the petitioner has submitted that delay in approaching this court inter alia for challenging the appellate order at Annexure-B to this petition has been explained in paragraph 6 of the memo of petition.

4. The appellate order at Annexure-B to this petition came to be passed as early as on 28th February 1995. It does not become clear from the material on record as to on what date it was served to the petitioner. In absence of any material on record, it can safely be inferred in view of Illustration (g) to Section 114 of the Indian Evidence Act, 1872 that it might have been communicated to the petitioner within reasonable period of a fortnight or so. This petition inter alia for challenging it has been filed as late as on 29th January 1996 about more than ten months after communication thereof. The only ground by way of explanation of this delay as stated in paragraph 6 of the petition is that the petitioner is a poor person and he had no sufficient means to approach this court by filing the present petition and he could do so only after arranging for the funds. I think the aforesaid ground given by way of explanation is no ground for delay. It transpires from the material on record that the deceased was running a brick-kiln in the disputed land. It was thus used for production of bricks. It is not the case of the petitioner that the brick manufacturing activity carried on in the disputed land was not a profit-making business if not a roaring business. In that view of the matter, the ground given by way of explanation for such delay is hardly palatable. I am therefore of the opinion that the delay of more than ten months in approaching this court inter alia for challenging the appellate order at Annexure-B to this petition is not satisfactorily explained.

5. It cannot be gainsaid that the jurisdiction under Article 226 of the Constitution of India is discretionary in nature. It is a settled principle of law that, if the

petitioner is found guilty of inordinate delay in challenging some order under Article 226 of the Constitution of India and if such delay is not satisfactorily explained, this court may not grant any relief to the petitioner in such a case. I am therefore of the opinion that this petition deserves to be rejected on the ground of unsatisfactorily explained delay on the part of the petitioner.

6. Even otherwise, this petition does not deserve to be entertained as the appeal against the impugned order at Annexure-A to this petition was time-barred. It transpires from the appellate order that the ground given for condonation of the delay in preferring the belated appeal was that the order under challenge in the appeal was a nullity and a nullity order can be challenged at any time. I think the aforesaid contention urged before the appellate authority could not have been entertained in view of the binding ruling of the Supreme Court in the case of STATE OF PUNJAB v. GURDEV SINGH reported in AIR 1992 Supreme Court at page 111. It has been held therein that even a nullity order has to be challenged within the prescribed period of limitation.

7. There is one more hurdle in the way of the petitioner in this case. Pursuant to the order at Annexure-A to this petition, the notification under Section 10 (1) of the Act was issued on 13th March 1985 and published in the Official Gazette on 4th April 1995 followed by the notification under Section 10 (3) thereof issued on 23rd May 1985 and published in the Official Gazette on 18th July 1985 followed by the notice under Section 10 (5) thereof issued on 23rd February 1985 followed by the action under Section 10 (6) thereof taken on 25th November 1986. It is also an admitted position on record that the order of compensation under Section 11 thereof was also passed as early as on 29th September 1987. By one order passed on 14th August 1996 in this case, the ad-interim relief granted earlier was vacated in view of the aforesaid fact-situation.

8. It cannot be gainsaid that the effect of the notification under Section 10 (3) of the Act is vesting of the land declared surplus under the order at Annexure-A to this petition in the State Government free from all encumbrances. As pointed out hereinabove, the deceased did not challenge the order at Annexure-A to this petition during his lifetime. It does not become clear from the material on record when he breathed his last. It may safely be assumed that he allowed the matter to proceed till the stage of Section 11 of the

Act. If that be so, it can safely be assumed that the deceased did not want to challenge the order at Annexure-A to this petition. That conduct on the part of the deceased by itself would be suggestive of the fact that the said order should be allowed to be final. This conduct on the part of the deceased should visit the present petitioner as his heir and legal representative. By his such conduct, the petitioner can be said to have become disentitled to claim any discretionary relief from this court under Article 226 of the Constitution of India. Even at the cost of repetition, it may be stated that the present petitioner has chosen to challenge the order at Annexure-A to this petition after expiry of ten years from its date only after his father breathed his last. I am therefore of the opinion that this petition deserves to be rejected on this ground alone.

9. Learned Advocate Shri Patel for the petitioner has submitted that the order at Annexure-A to this petition was a nullity inasmuch as the disputed land enjoyed exemption under Section 20 (1) of the Act and it could not have been declared surplus so long as the order of exemption at Annexure-C to this petition was not cancelled or withdrawn under Section 20 (2) thereof. Ordinarily, I would have accepted this submission. However, as pointed out hereinabove, the deceased himself wanted his declaration to be processed by treating the exemption as cancelled on the ground that no agricultural operations were carried on therein and it was converted into a non-agricultural land by starting his brick-kiln therein. It cannot be gainsaid that exemption under Section 20 (1) of the Act is granted for the benefit of the concerned landholder. He can certainly waive the benefit granted in his favour in an explicit or implicit manner. The explicit manner in which he can waive the benefit in his favour would be by applying for cancellation of the exemption under Section 20 (2) of the Act. He can as well waive such benefit in an implicit manner by requesting the concerned Competent Authority to process his declaration in the prescribed form under Section 6 (1) of the Act which was not processed on account of operation of the order of exemption. A benefit conferred on a party can certainly be waived by such party. In that view of the matter, it does not lie in the mouth of the petitioner now to contend that respondent No.2 could not have processed the declaration in the prescribed form filed by the deceased under Section 6 (1) of the Act so long as the disputed land continued to enjoy exemption under Section 20 (1) thereof. Since the benefit of exemption was waived by the deceased and since his declaration was processed by

respondent No.2 at his instance, the order at Annexure-A to this petition cannot be said to be a nullity.

10. Learned Advocate Shri Patel for the petitioner has pressed into service the binding ruling of the Supreme Court in the case of ATIA MOHAMMADI BEGUM v. STATE OF UTTAR PRADESH reported in AIR 1993 Supreme Court at page 2465 in support of his submission that the land was used for agricultural purposes on the date of coming into force of the Act and there was no master plan in existence answering its definition contained in Section 2 (h) of the Act at the relevant time. It transpires from the order at Annexure-A to this petition that the revenue records in the shape of Village Forms Nos.7/12 (popularly known as Panipatraks) qua the disputed land were perused and it was found that no agricultural operations were carried on in the dispute land right from 1964-65. It was found by respondent No.2 that the disputed land was used for manufacturing bricks by establishing a brick-kiln therein. In that view of the matter, the aforesaid binding ruling of the Supreme Court will not be applicable in the present case.

11. Learned Advocate Shri Patel for the petitioner has then urged that the authorities could not have proceeded beyond the stage of Section 10 (1) of the Act so long as the exemption order at Annexure-C to this petition was not cancelled or withdrawn under Section 20 (2) thereof. As pointed out hereinabove, exemption of the disputed land under Section 20 (1) of the Act was for benefit of the deceased as the landholder. He has clearly waived such benefit in his favour by requesting respondent No.2 to take up his declaration for processing. In that view of the matter, the authorities were justified in proceeding further according to law pursuant to the order at Annexure-A to this petition.

12. In view of my aforesaid discussion, I am of the opinion that the impugned orders at Annexure-A and B to this petition call for no interference by this court in this petition under Articles 226 and 227 of the Constitution of India.

13. In the result, this petition fails. It is hereby rejected. Rule is accordingly discharged with no order as to costs.

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